

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	)	Biblioteca Abelardo Díaz Alfaro
	)	Billed Entity Number 16052522
Requests for Review of	)	Funding Year 2011
Decisions of the	)	Form 471 Application Nos. 920752
Universal Service Administrator by)	
	)	Funding Requests Nos. 2512514,
Biblioteca Abelardo Díaz Alfaro	)	2512551, 2512567, 2512578, 2512583,
	)	2512609, 2512615, 2512625, 2512631
	)	2512636, 2512651, 2512672, 2512680
	)	2512698, 2512710, 2512734, 2512759
	)	2512791, 2512804, 2515317
)	
)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism)	
)	

ATT: The Commission

PETITION FOR RECONSIDERATION

Biblioteca Abelardo Díaz Alfaro of the Municipality of San Juan (hereinafter, the "Municipality") in the Commonwealth of Puerto Rico, hereby petitions the Commission to reconsider its decision in the *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, with respect to the above-referenced Funding Request Numbers ("FRNs") for Funding Year 2011, issued on March 27, 2015. The Commission did not issue an order on the merits, but included said appeal as denied for "*untimely request for review*".

I. INTRODUCTION

As previously stated, the “bibliotecas” – which is Spanish for “libraries” – that applied for E-Rate funding through the above-referenced FRNs are instrumentalities of the Municipality of San Juan in the Commonwealth of Puerto Rico.

As shall be discussed below in greater detail, this Petition for Reconsideration arises out of USAC’s faulty notification to the Municipality of its alleged breach of USAC’s vendor selection process. At no point did the Municipality receive notification of USAC’s FY2011 claim in a timely fashion. Due to no fault of its own, the Municipality failed to file its FY 2011 appeal in a timely fashion. Frustrating the Municipalities’ right to be heard, in light of these extraordinary circumstances, would be patently inequitable and unfair. In sum, denying the Municipality’s petition, in light of the specific facts underlying this Petition for Reconsideration, would run afoul the most basic principles of procedural due process and substantive justice. Hence, a determination denying the Municipality the right to be heard cannot stand.

As has been suggested in previous filings, the economy in Puerto Rico has been trapped in a very pervasive recessionary cycle since 2005, with plummeting tax revenues and a soaring unemployment rate of nearly 15 percent. Over 47 percent of Puerto Rico residents live below the poverty line (by comparison, the poverty rate in Mississippi, the poorest state in the United States, is 23 percent). Unfortunately, a disproportionate number of those living below the poverty line are children. San Juan, being Puerto Rico’s Capital and largest city, is home to a disproportionately large number of these impoverished children.

If this Commission does not reconsider its denial of the Municipality's appeal for FY2011, the results would be devastating to the Municipality, its library patrons and most importantly the public school children who currently benefit from the E-Rate Program.

Specifically, the Municipality would be liable for an extraordinary amount of money, which under the weight of the island's current fiscal exigencies is utterly exorbitant and unavailable at this time. With all likelihood, the Municipality would have to cease providing access to all Internet services to its library patrons as E-Rate funding is critical to Puerto Rico's economy and to the Municipality's public library patrons.

The record, as the available documentary evidence shows, is clear. From the outset, the Municipality has been completely committed to having its case reviewed by the FCC. But for an error in the method by which USAC notified the Notification of Commitment Adjustment Letters, the Municipality would have promptly appealed USAC's adverse determination concerning FY2011. Even if regular mail service is to be considered as an adequate-in-all-circumstances substitute for personal service in this case, allowances must be made when no actual notice of an adversary proceeding was actually made in order for the adjudication to be fair and workable. Doing otherwise offends the fundamental right to procedural due process, particularly in a case like the present one where funds, thus proprietary rights, have been taken without affording the Municipality an opportunity to be heard.

II. GROUNDS FOR RECONSIDERATION

On June 12, 2014, and as a result of the Selective Review, USAC issued a Notification of Commitment Adjustment Letters ("COMAD Notifications"). The COMAD Notification referencing FCC Form 471, No. 807387, rescinded funding commitments for 17 FRNs and states that USAC rejected funds from the applicant.¹

¹ Notification of Commitment Adjustment Letter from Schools and Libraries Division, Universal Services Administrative Company, to Jose M. Valentin, Biblioteca Abelardo Díaz Alfaro, Funding Year 2011, Form 471 Application Number 807387, dated June 14, 2014 ("COMAD Notification re Form 471 No. 807387") (Exhibit A). This COMAD letter was provided to the Municipality of San Juan by the provider Nevesem.

The COMAD Notification stated:

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. During the course of selective review the documentation provided with regards to vendor selection did not list price as the highest weighted factor. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek of any improperly disbursed funds from the applicant.

As can be ascertained from the attached COMAD Notification referencing FCC Form 471 No. 807387, the same was **not addressed** to Director Sara I. Benítez (only a separate paper was), the director of the "Departamento para el Desarrollo Social Comunitario" (Department for Social and Community Development), the agency that administers the E-rate program in the Municipality of San Juan. This was done by USAC, although it had addressed much correspondence to Director Benítez and she had signed many documents since 2013, when she became the new Director. The COMAD Notification was addressed to **former** Director Jose M. Valentín, and this was the origin of the problem which caused the untimeliness in the filing of our appeal for FY2011.

In our original *Request for Review and Waiver* for FY2011, the Municipality explained this when it was brought to the attention of the Municipality that in fact the COMAD letter had been issued. Against this background, the Municipality conducted an exhaustive search that revealed that the original COMAD letter got lost in the internal mail. That it *appeared* to have been misfiled with other USAC documents, without being brought to the attention of the appropriate officials. And that when the document was finally found as late as October 8, 2014,

it had not been date-stamped, nor registered in the official register of correspondence. At this point, the Municipality was at a loss as to how this happened, which brought about its failure to timely file the instant appeal and/or request for review.

After the filing of our *Request for Review and Waiver* for FY2011, an administrative review ensued to determine the cause of the Municipality's untimeliness in filing said appeal.² During the summer months, many regular employees at the Municipality enjoy their paid leave and this results in many areas working with "skeleton" crews or temporary placements from other divisions. As previously stated, all incoming official correspondence is date-stamped and registered in an official register, in chronological order, as it arrives at the Municipality. This of course includes any USAC communications.

During the summer of 2014, the original COMAD Notification referencing FCC Form 471 No. 807387 was mailed via regular mail, not certified, to the Municipality. Because the COMAD letter itself was not addressed to Director Sara I. Benítez, but rather to former Director José M. Valentín, the person who received the letter re-routed the same to Ms. Loyda López's desk, who was on vacation at the time, and did not find out of this letter until many months after, when it was found in a pile of papers at her desk. The person who received the letter did not forward the same to Director Benítez nor did it go through the proper channels. In the manner USAC addressed its Notification it made it less likely that the COMAD was correctly identified as official correspondence and thus, properly registered.

Because the appropriate official, Director Sara I. Benítez, did not receive the original COMAD Notification referencing FCC Form 471 No. 807387, nor was it addressed to her, the

² The Municipality hereby relies on facts and arguments that have changed and/or were unknown when it previously filed the appeal with the Commission, as set forth in 47 C.F.R. §1.106 (b)(2).

Municipality was not on notice that the deadline to file an appeal was looming. Originally, the Municipality understood that it did not receive the original COMAD Notification because it had not been issued. It was because of the wrong addressee in the letter that it arrived but was never recorded or brought to the Director. This situation brought about its failure to timely file the instant appeal and/or request for review. When the situation came to light, the Municipality's service provider furnished the Municipality with copy of the COMAD Notification. Unfortunately, by that time, the 60-day period for filing an appeal had lapsed.

As the Municipality has previously stated to the Commission in the context of an appeal for another funding year --in which it prevailed--, the fact that the E-rate program issues its communications solely in English presents a very real challenge to the Municipality because administrative staff may not fully appreciate the nature of the communications from USAC. The honest but mistaken confusion with respect to subsequent Demand Payment Letters does not change the fact that the Municipality did not know that USAC issued the COMAD Notification on June 12, 2014 and that the deadline for any appeal was August 11, 2014. The fact remains that the COMAD Notification never reached the appropriate Municipality official, in great part because it was sent to the wrong addressee.

As also stated above, the Municipality has timely appealed COMADs for other funding years, and there was no reason for the Municipality to purposely miss a deadline and further jeopardize its participation in the E-rate program. The delay by the Municipality in filing the Request for Review in this particular filing was completely unintentional, and previously explained; it believed that such an appeal was not due until October 12, 2104. It is respectfully submitted that a reasonable inference can be made in the Municipality's favor that an extraordinary and involuntary event intervened and caused its untimeliness. The record is clear

that the Municipality has fully complied with each and every deadline imposed in all its appeals and submissions.

The Municipality respectfully submits that these reasons constitute good cause for a waiver of the 60-day deadline in section 54.720 of the Commission's rules, as it occurred in *In the Matter of Petition for Reconsideration by Franklin County School District, Louisburg, North Carolina*, 26 FCC Rcd. 14251 (F.C.C.), 26 F.C.C.R. 14251, 2011 WL 4688874. In said case, the school district filed its appeal more than a year late, because it was not aware that its invoices had been denied until the audit was conducted, and as here, once it discovered the problem, it immediately filed an appeal. Thus, it was determined that because Franklin County submitted its appeal to USAC within a reasonable period of time after receiving **actual** notice of USAC's adverse decision, good cause was found to waive section 54.720 of the Commission's rules and accept Franklin County's appeal as timely filed.

As a matter of equity and fairness, it is respectfully submitted that the Commission should take into consideration that Director Benítez never received actual notice of USAC's adverse decision until after the 60 day deadline had elapsed. See also, *Request for Review of the Decision of the Universal Service Administrator by ABC Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-584091, *et al.*, CC Docket No. 02-6, DA 11-1332 (granting 24 appeals after finding good cause to waive USAC's deadline for filing FCC Forms 472 or 474).

A waiver would have minimal impact on the universal service fund, as the funds were already approved in Funding Commitment Decision Letters and disbursed by USAC. In the absence of a waiver, the Municipality will have to: (a) stop participating in the program because USAC will get the Municipality "red-lighted" and the Municipality will not have the funds

necessary to get the red light lifted, (b) in all probability ask its current service provider to discontinue service, as the Municipality may not be in position to incur in more liability to USAC, and (c) leave its patrons without Internet access at a time when such services are most necessary for those seeking educational and employment opportunities, health care information, information about government services and benefits, among others.

The Supreme Court has established that "[t]he fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v. Ordean*, 234 U.S. 385, 394, [34 S.Ct. 779, 58 L.Ed. 1363 (1914)]. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). In this case, USAC addressed the letter to the former Director, which in turn got lost within the Municipality given the high volume of mail handled daily at the sorting center. Thus, said letter never reached the appropriate Municipality official, Director Benítez. Notice consistent with due process "will vary with circumstances and conditions," *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 802 (1983) (O'CONNOR, J., dissenting) (emphasis deleted) (internal quotation marks omitted).

Given the circumstances here, failure to reconsider its denial for review would be most unfortunate because the Municipality is confident that the record is clear as to the substantive matter, that it ultimately selected the lowest cost bid and that it did not engage in fraud, waste, abuse or misuse of funds. The monies received from USAC were used for good and valuable services received from a service provider who was selected through a fair and unbiased competitive bidding process and who, as an undisputed fact, offered the lowest cost proposal. This was a good use of E-rate funds. Under these facts, the Commission should exercise its

discretion to waive its rules because strict compliance in this particular factual context would be completely inconsistent with the public interest.

Finally, it is also very respectfully requested the Commission stay the effectiveness of its order or requirement pending a decision on the instant petition for reconsideration for the same reasons set forth above.

Respectfully submitted,

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DATE: April 26, 2015
Via the FCC's Electronic Comment
Filing System (ECFS)

Declaration of Sara I. Benítez Delgado

I, Sara I. Benítez Delgado, hereby declare under penalty of perjury that:

1. I am the Director of the Municipality of San Juan's Departamento para el Desarrollo Social Comunitario. My business address is: My business address is: P.O. Box 70179, San Juan, PR 00936-8179.
2. I have read the accompanying *Petition for Reconsideration* by Biblioteca Abelardo Díaz Alfaro of the Municipality of San Juan. The statements made in the *Petition for Reconsideration* are true and correct to the best of my knowledge and belief.



Sara I. Benítez Delgado

Executed: April 26, 2015